

**EXECUTIVE SUMMARY OF SB 78**

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for the Montana Life and Health Insurance Guaranty Association

This legislation improves the Montana Life and Health Insurance Guaranty Association law by incorporating critical elements of the 2009 NAIC Life and Health Insurance Guaranty Association Model Act ("Model Act") while maintaining significant provisions of existing Montana law. The legislation seeks revisions to the Guaranty Association statute which will benefit policy and contract holders by increasing the benefits available under Montana law. The most significant changes proposed include:

- Specifying Long Term Care Coverage for \$300,000
- Increasing Annuity Coverage from \$100,000 to \$250,000
- Increasing Structured Settlement Annuity Coverage from \$100,000 to \$250,000

The remaining changes are largely technical revisions designed to improve the operations of the Montana Life and Health Insurance Guaranty Association ("Guaranty Association"), eliminate coverage gaps by enabling consistent coverage across state lines, conform the statute to the technical ways that insolvencies are actually handled and facilitate greater coordination among individual State Guaranty Associations. These changes include:

- Strengthening definitions and modifying provisions to facilitate consistency among State Guaranty Associations involved in Multi-State Insolvencies
- Activating individual State Guaranty Associations at the same time
- Clarifying the coverages available and the assessments that may be made to provide those coverages

For your information, we have provided a section by section analysis that walks through the particulars of each of these changes, highlights the purpose of each proposed change, and generally explains how the change will benefit Montana consumers.

#### **A. Section 33-10-201. Title, Purpose and Construction (Section 1 of Bill)**

The title, purpose and construction provisions of this statute have not been revised. It will continue to be the purpose and objective of the Guaranty Association to protect policy and contract holders of insolvent insurers. The Guaranty Association will continue to provide the same types of protection that it has for nearly 45 years. However, it will now be able to provide greater monetary benefits in a variety of circumstances and in a manner more consistent with other state guaranty associations. The language requiring that the part be liberally construed to effect its purpose remains the same.

The subsections being removed from section 201 are moved to and updated in section 224.

#### **B. Section 33-10-202. Definitions (Section 2 of Bill)**

The vast majority of the definitions have been retained without revision. The following definitions have been added or modified to ensure conformity across states lines, activate guaranty associations at the same time for coordination purposes, and prevent gaps in coverage.

1. Section 202(3) and (5): This language is based on the Model Act and conforms the statute to the practices of the Guaranty Association by including the concept of "Authorized" and "Called" assessments. This allows the Guaranty Association to assess member insurers in one year and call the assessment in future years. This allows the Guaranty Association to use its assessment capacity in one year for needs in future years.
2. Section 202(6): The definition of Contractual obligation is revised to clarify and expressly state the various types of instruments for which coverage is provided.
3. Section 202(7): The definition of Covered policy is revised to make clear and confirm that the Guaranty Association will provide coverage even when the entire policy is not covered.
4. Section 202(8): Extra-contractual claims is defined. This technical Model Act language is intended to create consistency across state lines by defining terms used within the statute.
5. Section 202(11): The definition of Member insurer is modified to clarify that a hospital or medical service organization is not a member insurer.
6. Section 202(13): The definition of Owner is modified to confirm that a person with a mere beneficial interest in the policy or contract is not an owner.
7. Section 202(16): The definition of Premium is revised to make clear that certain premiums are not included within the definition.
8. Section 202(17): The definition of Principal Place of Business is expanded in that it is no longer limited to plan sponsors. This Model Act concept will make certain that gaps

in coverage are not created due to conflicting conclusions by different State Guaranty Association's on an entity's principal place of business.

9. Section 202(19): The definition of Resident is revised to be consistent with the Model Act. This will ensure that there are no gaps in coverage and that Montana residents do not inadvertently lose coverage.

10. Section 202(20): A definition for State is added to include the concept of the District of Columbia, Puerto Rico and United States possessions, territories and protectorates are treated as states for purposes of this part.

11. Section 202(22): The definition of Supplemental Contract is clarified to confirm that "life, health or annuity" modifies the terms policy and contract.

**C. Section 33-10-203: Creation of Association; Accounts and Supervision by the Commissioner**

No revisions to this section have been proposed, and Montana's unique provisions have been maintained.

**D. Section 33-10-204: Board of Directors; Commissioner Approval and Compensation**

No revisions to this section have been proposed, and Montana's unique provisions have been maintained.

**E. Section 33-10-205: Powers and Duties of the Association (Section 3 of Bill)**

While at first glance it appears that extensive revisions are being proposed in this section, the revisions largely bring all of the powers and duties of the Guaranty Association together in one place in the statute. This makes it clear what the Association may and must do with respect to both impaired and insolvent insurers and eliminates the need for extensive cross references between the various powers and duties sections. Further, it allows consumers and other interested parties to review one provision to find out the instances in which the Guaranty Association will be activated to provide coverage.

1. Section 205(1): This provision is nearly identical to the language previously located in Section 219. The revised language does confirm that the Guaranty Association may loan money to ensure payment of the contractual obligations of an impaired insurer.

2. Section 205(2): This provision largely consists of language previously located in different sections of the part. For example, Section 205(2) was previously located at Section 220(1), and Section 205(2)(b) was previously located at Section 220(6). The provisions have been rearranged to promote clarity and consistency. Further, some of the language has been rewritten in an effort to maintain the same meaning, but make it more user friendly. Next, the types of protections the Guaranty Association may provide with respect to impaired insurers is clarified. For example, in Section 205(2)(b)(iv)(C), the part now requires the Guaranty Association, when issuing alternative policies in

- connection with an impaired insurer, to provide coverage of a type similar to that issued by the impaired insurer. This requirement previously only applied to insolvent insurers.
3. Section 205(3): This provision was located at Section 220(8). Its meaning is the same, but it has been revised from the Model Act language to make it more user friendly.
  4. Section 205(4): This provision was located at Section 220(9). The language has been broken into 2 sentences to make it more readable.
  5. Section 205(5): The identical language was located at Section 220(2).
  6. Section 205(6): Similar language was located at Section 220(3). Moratoriums and liens are sometimes used in multi-state insolvencies. Therefore, in order to maximize protections and ensure efficient administration, it is important for states to have similar provisions.
  7. Section 205(7): This provision was located at Section 220(5) and was identical in all material respects.
  8. Section 205(8): This provision was located at Section 220(7) and was identical in all material respects.
  9. Section 205(9): Minor revisions are made to this section. For example, the Guaranty Association is given the express right to take legal action to recover payment of improper amounts. Further, the Guaranty Association may organize itself as a corporation or other legal form.
  10. Section 205(10): No changes are made to this section.
  11. Section 205(11): Minor changes are made to this section, including the addition of language confirming the Guaranty Association's standing to appear before agencies.
  12. Section 205(12): This provision confirms that the Guaranty Association may join with other state guaranty associations to coordinate efforts to address insolvencies. This allows for the more effective and efficient protection of policyholders.
  13. Section 205(13): No changes are made to this section.
  14. Section 205(14): No changes are made to this section.
  15. Section 205(15): No material changes are made to this section.
  16. Section 205(16): This provision avoids duplicate coverage by confirming that individuals are entitled to Guaranty Association protection from only one state.

**F. Section 33-10-210: Unfair Trade Practices—Notice to Policyholders (Section 4 of Bill)**

The revisions to this section clarify that it is the obligation of non-member insurers to notify their insureds that they will not be entitled to the protections afforded by the Guaranty Association.

**G. Sections 33-10-211 through 214: Reserved**

**H. Section 33-10-215: Duties and Powers of Commissioner**

No changes have been made to this provision.

**I. Section 33-10-216: Plan of Operation (Section 5 of Bill)**

Minor revisions have been made to this provision. For example, outdated language related to the first Plan of Operation to be submitted in 1974 has been removed.

**J. Section 33-10-217: Prevention of Insolvencies or Impairments (Section 6 of Bill)**

Minor revisions have been made to this provision. For example, because State is now defined in the part, reference to the territories and the District of Columbia is no longer needed. Section (7) of the provision is obsolete. The National Association of Insurance Commissioners now provides extensive reporting on insolvencies and recommended the deletion of this provision.

**K. Section 33-10-218: Examination by Commissioner**

No changes have been made to this provision.

**L. Sections 33-10-219 and 220: Repealed ((Section 13 of Bill)**

The substance of these Sections have been incorporated into Section 205.

**M. Section 33-10-221: Nomination of Liquidator by Association**

No changes have been made to this provision.

**N. Section 33-10-222: Stay of Proceedings (Section 7 of Bill)**

Given the complexity of modern insurance insolvencies and the involvement of many states, the 60 day stay is not practical. Therefore, the length of the stay is increased to 180 days.

**O. Section 33-10-223: Assignment by Beneficiaries—Subrogation (Section 8 of Bill)**

Minor changes are made to this provision in order to clarify that the Guaranty Association has subrogation rights with respect to payments made in connection with both impaired and insolvent insurers.

**P. Section 33-10-224: Coverage, Limitation and Extent of Liability (Section 9 of Bill)**

This section defines the persons entitled to coverage in paragraph (1), the products covered in paragraph (2), the extent of benefits covered in paragraph (3) and clarifies some of the limitations on coverage throughout the section. The revisions to this section are beneficial to policy and contract holders in a variety of ways. For example, the limits are increased for annuity products; coverage for long-term care insurance is confirmed and the generous Montana limits for life and health benefits are maintained. The current Montana provisions for coverage for Montana residents is maintained and simply moved for clarity.

Again, while the revisions appear extensive, many of the revisions simply reflect movement of a provision. This has been done to give consumers and other interested parties one provision to look at when trying to determine whether they are covered and the extent of coverage they will have.

1. Section 224(1): This provision adopts the Model Act language for persons covered by the part. This entire provision is moved from section 201(4)-(10) with some minor and technical changes which do not impact the coverage provided to Montana residents.
2. Section 224(2)(a): This provision defines the contracts and policies which are covered by the Guaranty Association. In all material respects, this language is identical to the language which was located at 201(4).
3. Section 224(2)(b): This provision contains limitations and exclusions from coverage. Again, much of this provision exists in the current statute. The new provisions include Sections (2)(b)(ii), (ix) and (xiii). Section (ii) precludes coverage for a policy or contract of reinsurance unless assumption certificates have been issued. Section (ix) codifies the Guaranty Association's current practice and case law from other states. Any portion of a policy or contract is not covered by the Guaranty Association where assessments may not be made on premium paid for the policy. This occurs if such assessment is disallowed by federal or state law. Section (xiii) clarifies the Guaranty Association's obligations with respect to Medicare Parts C and D (Medicare Advantage products).
4. Section 224(3): This section explains the amount of coverage that will be provided. The revisions confirm that \$300,000 in coverage is available for long-term care insurance. Moreover, coverage for annuities and structured settlement annuities is increased from \$100,000 to \$250,000.

**Q. Section 33-10-225: Association as Creditor—Use of Assets (Section 10 of Bill)**

Section (3) is added to confirm the right of the Guaranty Association to request a distribution of assets from the estate of the insolvent insurer.

**R. Section 33-10-226: Distribution of Ownership Rights—Distribution to Shareholders  
(Section 11 of Bill)**

The revisions to this section merely clarify that the Guaranty Association must be fully reimbursed for amounts it has paid, plus interest, before a distribution from the insolvent insurer estate may be made to shareholders.

**S. Section 33-10-227: Assessments (Section 12 of Bill)**

The revisions to this section reflect the reality of how the Guaranty Association handles assessments against its member insurers. These are technical changes which confirm the ability of the Guaranty Association to authorize an assessment in one year, but call it in another year. This allows the Guaranty Association to maximize the amount of funds available to protect consumers. Further, provisions explaining how member insurers may protest assessments have been added.

**T. Section 33-10-228: Repealed (Section 13 of Bill)**

**U. Severability and Effective Date Provisions (Sections 14 and 15 of Bill)**